

## 2007 DRAFTING REQUEST

### Assembly Amendment (AA-ASA1-SB40)

Received: 06/28/2007

Received By: rnelson2

Wanted: Soon

Identical to LRB:

For: Legislative Fiscal Bureau 6-3692

By/Representing: Onsager

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - civil procedure

Extra Copies:

Submit via email: YES

Requester's email:

Carbon copy (CC:) to:

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#### Pre Topic:

LFB:.....Onsager -

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#### Topic:

Nuisance actions

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#### Instructions:

Prohibit state from bringing nuisance actions in certain situations

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#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	rnelson2 06/28/2007	jdyer 06/28/2007	pgreensl 06/28/2007	_____	lparisi 06/28/2007		

FE Sent For:

<END>

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/?	rnelson2	1/28 jld	8/24 p8	6/29 p8			

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LFB

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Document saved in this folder: s:\lfb share\summary\

# **1. DEPARTMENT OF JUSTICE NUISANCE LITIGATION**

Prohibit the Department of Justice from bringing or joining a nuisance lawsuit if the alleged activity is not in violation of a statute, rule, permit, or ordinance.

RPN

~~Onsager~~  
Onsager

## ASSEMBLY BILL 278

## SECTION 6

1 a newspaper of general circulation in the place where the manufacturer is holding  
2 the special tool for sale, in the place of the customer's last-known address, and in the  
3 place of the other person's last-known address.

4 3. If a customer disagrees with the statement specified in subd. 1. e. that is  
5 included in a notice, the customer may notify the manufacturer of the disagreement  
6 in writing by registered mail, return receipt requested. If a manufacturer receives  
7 a notification under this subdivision before the date of the public auction, the  
8 manufacturer may not sell the special tool at public auction until after the  
9 disagreement is resolved.

10 (e) *Proceeds.* The proceeds of a sale of a special tool under par. (d) shall, if  
11 applicable, first be paid to a prior lienholder who has perfected a lien in an amount  
12 sufficient to extinguish that lien. Any excess proceeds shall next be paid to the  
13 manufacturer in an amount sufficient to extinguish the manufacturer's lien. Any  
14 remainder shall be paid to the customer.

15 SECTION 7. 823.025 of the statutes is created to read:

16 **823.025 Litigation expenses in an action to abate or enjoin a public**  
17 **nuisance.** (1) In this section, "litigation expenses" means the sum of the costs,  
18 disbursements, and expenses, including reasonable attorney fees, expert witnesses,  
19 and engineering fees, necessary to prepare or participate in a court action.

20 *department of justice or join in a*  
(2) The ~~state~~ may not bring an action under s. 823.02, ~~and a county, city, village,~~  
21 ~~or town may not bring an action under s. 823.01,~~ if the activity, use, or practice  
22 alleged to be a nuisance is not in violation of any statute, rule, permit, approval, or  
23 local ordinance or regulation.

24 (3) Notwithstanding s. 814.04 (1) and (2), the court shall award litigation  
25 expenses to the defendant in any action brought under s. 823.01 or 823.02 in which

6 (END)



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRBb0874/1

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FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

**ASSEMBLY AMENDMENT,**

**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**

**TO 2007 SENATE BILL 40**

1 At the locations indicated, amend the substitute amendment ✓ as follows:

2 **1.** Page 1531, line 5: after that line insert:

3 **"SECTION 3767m.** <sup>x</sup> 823.02 of the statutes is renumbered 823.02 (1) ✓ and amended

4 to read:

5 823.02 (1) Injunction against public nuisance, time extension. ✓ An

6 Except as provided in sub. (2), ✓ an action to enjoin a public nuisance may be

7 commenced and prosecuted in the name of the state, either by the attorney general

8 on information obtained by the department of justice, or upon the relation of a private

9 individual, sewerage commission created under ss. 200.01 to 200.15 or a county,

10 having first obtained leave therefor from the court. An action to enjoin a public

1 nuisance may be commenced and prosecuted by a city, village, town or a metropolitan  
2 sewerage district created under ss. 200.21 to 200.65 in the name of the municipality  
3 or metropolitan sewerage district, and it is not necessary to obtain leave from the  
4 court to commence or prosecute the action. The same rule as to liability for costs shall  
5 govern as in other actions brought by the state. No stay of any order or judgment  
6 enjoining or abating, in any action under this section, may be had unless the appeal  
7 is taken within 5 days after notice of entry of the judgment or order or service of the  
8 injunction. Upon appeal and stay, the return to the court of appeals or supreme court  
9 shall be made immediately.

History: 1971 c. 276; Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stat. 1975 s. 823.02; 1977 c. 187, 379; 1981 c. 282; 1999 a. 150 s. 672.

10 **SECTION 3767n. 823.02 (2) of the statutes is created to read:**

11 823.02 (2) The department of justice may not bring or join in an action under  
12 this section if the activity, use, or practice alleged to be a nuisance is not in violation  
13 of any state statute, rule, permit, or approval or local ordinance or regulation.”.

14 (END)



State of Wisconsin  
2007 - 2008 LEGISLATURE

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1 or a metropolitan sewerage district created under ss. 200.21 to 200.65 in the name  
2 of the municipality or metropolitan sewerage district, and it is not necessary to  
3 obtain leave from the court to commence or prosecute the action. The same rule as  
4 to liability for costs shall govern as in other actions brought by the state. No stay of  
5 any order or judgment enjoining or abating, in any action under this section, may be  
6 had unless the appeal is taken within 5 days after notice of entry of the judgment or  
7 order or service of the injunction. Upon appeal and stay, the return to the court of  
8 appeals or supreme court shall be made immediately.

9 **SECTION 3767n.** 823.02 (2) of the statutes is created to read:

10 823.02 (2) The department of justice may not bring or join in an action under  
11 this section if the activity, use, or practice alleged to be a nuisance is not in violation  
12 of any state statute, rule, permit, or approval or local ordinance or regulation.”.

13 (END)